

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2004-316-C - ORDER NO. 2006-225  
APRIL 27, 2006

IN RE: Petition of BellSouth Telecommunications, ) ORDER GRANTING  
Incorporated to Establish Generic Docket to ) PETITION FOR  
Consider Amendments to Interconnection ) CLARIFICATION  
Agreements Resulting from Changes of Law )

This matter comes before the Public Service Commission of South Carolina (the Commission) on a Petition for Clarification of two aspects of Order No. 2006-136 filed by BellSouth Telecommunications, Inc. (BellSouth or the Company). We grant the Petition and provide clarification to the parties as discussed below.

BellSouth first notes that, with regard to Issues 4, 5, and 7, Order No. 2006-136 makes clear the wire centers in South Carolina that satisfy the FCC's impairment tests. Order at 41. However, the Order also states that "BellSouth shall modify its language where appropriate to allow wire centers to become impaired, if indeed, this becomes the case after March 10, 2006." Order at 39. BellSouth notes that all parties apparently agree that once it has been determined that competitive local exchange carriers (CLECs) are not impaired without access to certain unbundled network elements (UNEs) in a given wire center, future changed circumstances cannot cause that wire center to revert to its impaired status. BellSouth states that it does not believe that Order No. 2006-136 attempts to abrogate the Federal Communications Commission (FCC) Rules and Orders that require this result. In fact, BellSouth states a belief that the language identified above is intended to address new wire centers that may be constructed in the future, and not

existing wire centers that have already been determined not to be impaired. BellSouth goes on to point out specific authority for its conclusions, e.g., Triennial Review Remand Order (TRRO), Paragraph 167 (at n. 466); 47 C.F.R. Paragraphs 51.319 (a) (4); 51.319 (a) (5); and 51.319 (e) (3).

We have examined these authorities and agree that they stand for the proposition that future changed circumstances cannot cause existing wire centers to revert back to impaired status, and we so hold. We must state, however, that at the time of the issuance of the TRRO, we do not believe that the FCC envisioned the scope of merger activity that has occurred since that time that has removed competitors to the incumbent local exchange carriers (ILECs). We are hopeful that these rules will be reviewed by the FCC in its upcoming proceeding on the AT&T-BellSouth merger. At present, however, we agree and hold that the Federal rules require that we find that the wire centers listed cannot later become impaired, absent a change in FCC rules.

The second issue raised by BellSouth addresses Issues 23 and 28 in Order No. 2006-136, which relates to the appropriate language to include in interconnection agreements relating to fiber to the home (FTTH) and fiber to the curb (FTTC) loops. This Commission ruled at page 66 of the Order that BellSouth's contract language should be modified "to allow the provisions of the requested loop in wire centers which are impaired at TELRIC prices."

BellSouth states that if the Commission intended to require BellSouth to provide access to certain DS1 FTTH or FTTC loops, then it requests that this Commission adopt certain language, which is a combination of CompSouth's original proposed language with BellSouth's proposed language:

In new build (Greenfield) areas, where BellSouth has only deployed FTTH/FTTC facilities, BellSouth is only required to unbundle DS1 and DS3 FTTH/FTTC loops to predominantly commercial MDUs, but has no obligation to unbundle such fiber loops to predominantly residential MDUs or any other end user customer premises. While the FCC's rules provide that FTTH/FTTC loops serving end user customer premises do not have to be unbundled, CLEC access to unbundled DS1 and DS3 loops at predominantly commercial MDUs is preserved.

Accordingly, in wire centers in which a non-impairment finding for DS1 or DS3 loops has not been made, BellSouth is obligated upon request to unbundle a FTTH/FTTC loop to provide a DS1 or DS3 loop to a predominantly commercial MDU.

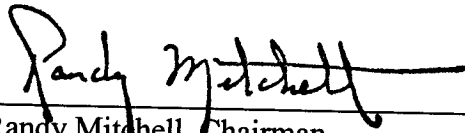
According to BellSouth, this language more fully addresses the scope of the FCC's fiber relief, which does not require unbundling at predominantly residential MDU's. BellSouth's concern is that the language originally proposed by CompSouth in this proceeding could be read to require BellSouth to provide a CLEC with a DS1 loop to a predominantly residential MDU, which, in BellSouth's opinion, clearly conflicts with the FCC's *MDU Reconsideration Order*, found in CC Docket No. 01-338, FCC 04-191 (Aug. 9, 2004). While BellSouth states that its originally proposed contract language would be appropriate, BellSouth requests the clarification of Order No. 2006-136 to make clear that the language above accurately reflects this Commission's intended modification.

Indeed, we adopt the new proposed contract language as stated above, since we agree that the language accurately reflects this Commission's intended modification. The proposed language is appropriate in properly reflecting the law in this area.

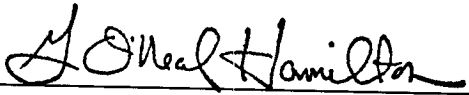
We therefore grant the Petition for Clarification and hold as stated in the preceding paragraphs. We trust that this Order will provide clarification for all parties in this exceedingly complex area.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
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Randy Mitchell, Chairman

ATTEST:

  
\_\_\_\_\_  
G. O'Neal Hamilton, Vice-Chairman

(SEAL)